THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION No.2761 OF 2007

DATED: 15-03-2007

BETWEEN

M/s. Naina Devi Wines, Shop No.S-21,
Quli Qutubshahi Stadium, Near City College
X Roads, Hyderabad, rep. by its Licencee
Mr. C. Prakash Yadav.

...PETITIONER

AND

The Commissioner of Prohibition & Excise,
Government of Andhra Pradesh, Hyderabad
and others.

...RESPONDENTS

ORDER:

Heard the learned counsel for the petitioner and the learned Government Pleader for Prohibition and Excise as well the learned Government Pleader for Home.

2. It is the case of the petitioner that the third respondent – the Prohibition and Excise Superintendent, Dhoolpet, notified IL A4 shop at S.No.165 in the Gazette to which he became the highest bidder at Rs.47,50,000/- and the third respondent issued him a licence in

Form A4 for conducting retail wine shop business vide licence No.40/2006-08/Dpt., dated 03.07.2006 valid up to 30.06.2008 to sell Indian Made Foreign Liquor and Foreign Liquor on the premises bearing No.21-3-222, Moosa Bowli, Hyderabad, which was in Ward N0.76, Gulzar House, Hyderabad. As the said premises was situated within the prohibited distance prescribed under Rule 27(1) of the Andhra Pradesh Excise (Lease of Right Selling by

Shop and Conditions of Licence) Rules, 2005 (for short 'the Shop Rules'), the petitioner filed WP.No.13042 of 2006 and this Court disposed the writ petition along with a batch of writ petitions directing the petitioner to maintain 100 meters distance from the Educational Institutions, Places of Worship etc. Pursuant to the said orders the petitioner shifted his licence to an alternative premises at Shop No.S-21, Quli Qutubshahi Stadium, Hyderabad, after the third respondent vide orders dated 05.02.2007 considered the request of the petitioner and permitted him to shift the shop in conformity with Rule 27(1) of the Shop Rules. Thereafter, the petitioner shifted his shop and started conducting the business from 05.02.2007.

3. It is his further case that the local people under the garb of minority are raising hue and cry and preventing the smooth functioning of his business. Therefore, he filed a representation before the Home Minister marking copies to all the respondents particularly to the fifth respondent, who is under obligation to maintain law and order in the said area. It is stated that in spite of the said representation the fifth respondent is not giving any police protection to carry on his business. It is stated that, in fact, the Quli Qutubshah Urban Development Authority also issued a No Objection Certificate on 22.01.2007. Therefore, the petitioner was constrained to file this writ petition to declare the action of the respondents in not providing protection to him to carry on his business smoothly in the said premises in accordance with the licence granted in his favour.

4. This Court while issuing notice before admission on 15.02.2007 directed the respondents to make an enquiry and file a counter.

This Court again on 27.02.2007 directed the first respondent to personally inspect the premises and verify as to whether the said premises is in conformity with Rule 27 of the Shop Rules and file a report by 05.03.2007.

5. The first respondent filed a counter on 05.03.2007 stating that the premises of the petitioner is situated 120 meters away from Sri Annammachariya Government College of Dance & Music; 185 meters away

from the main entrance of City College, 193 meters away from the back side gate of City College and 103 meters away from Bhagath Shah Dargah. Though the premises of the petitioner is situated within 11 meters of Seethal Matha Temple and 74 meters of Sri Balaji Temple, it is stated that the said temples are not registered with Endowments Department and therefore, there is no prohibition for granting permission to shift the premises.

6. The fifth respondent also filed a counter on 12.03.2007 stating that the said shop of the petitioner is situated within the prohibited distance from the City College, Yellamma temple and Balaji Temple

7. As the counter of the fifth respondent is quite contrary to the counter of the third respondent, I have directed the Commissioner of Prohibition & Excise to personally visit the premises and measure the distance. The first respondent accordingly filed a counter and map showing that the premises of the petitioner is well beyond the prohibited distances. More so, no objections have been filed by anybody with regard to the manner and method adopted by the Commissioner and other licensing authorities in measuring the distances, therefore, it cannot be said that the premises of the petitioner is within the prohibited distance. If that be so, the petitioner is entitled to carry on the business in the said premises in accordance with the licence granted in his favour.

8. When the licence granted in favour of the petitioner is in accordance with the statute, it is the duty of the police to maintain law and order and to see that the business is carried on smoothly, without any hindrance either by the vested interest or by the public.

9. Having regard to the facts and circumstances of the case,
the fifth respondent is directed to provide necessary police protection to the petitioner – M/s. Naina Devi Wines, Shop No.S-21, Quli Qutubshahi Stadium, Hyderabad, for conducting business in accordance with the licence

granted by the Prohibition and Excise department.

The writ petition is accordingly disposed of. There shall be no order as to costs.

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V. ESWARAIAH, J

March 15, 2007
DSK